

Practical Tips for Rule Drafters



Frequently Asked Questions

Filing Rules

1. What is the easiest way for an agency to obtain the current rule text in Word format to use in preparing amendments to an administrative rule?

Current rule text in Word format is available on the Secretary of State's (SOS) Administrative Rules Division website at <http://www.sos.mo.gov/adrules/agency/> under the Rule Copies to Amend.

2. Where can I find the fiscal note forms, affidavit, and transmittal sheet I need to complete for filing a rule?

Copies of the fiscal note forms, affidavit, and transmittal form are available at <http://www.sos.mo.gov/adrules/forms.asp>. These forms may be downloaded, completed, and saved as a document in your system prior to submission to SOS.

3. May I use email to submit an electronic copy of the rule text rather than providing a diskette or CD?

Yes. You may email an electronic Word copy of the rule, in lieu of making a CD, to rules@sos.mo.gov prior to filing the original and paper copy(ies) with the Joint Committee on Administrative Rules (JCAR) and Secretary of State (SOS) Administrative Rules Division.

4. What is required to be contained in the rulemaking packet filed with Joint Committee on Administrative Rules and the secretary of state's office?

The rule packet should contain, in this order, 1) a completed transmittal sheet, 2) a certification letter addressed to SOS for the SOS packets and a certification letter addressed to JCAR for the JCAR packet, 3) a public cost affidavit, 4) a hard copy of the rule text, 5) public cost fiscal note, if applicable, 6) private cost fiscal note, if applicable, and 7) forms or other included herein materials, if applicable. Remember to email an electronic Word copy of the rule text and fiscal notes, when applicable, prior to filing the rulemaking packets with JCAR and SOS to rules@sos.mo.gov or bring an electronic copy of these documents on CD to SOS at the time of filing.

5. Does the secretary of state's office have any format requirements for the rules?

The secretary of state's office requires 1) 11- or 12-point type for the rule text, 2) use of only one side of the paper, and 3) a JCAR stamp (always required) and a Small Business Regulatory Fairness Board stamp (if applicable) on the transmittal and on each original and copy of every rule filing. Amendments are required to have brackets and italics for deleted text and bold type for new text.

6. When is a state agency required to submit a copy of proposed rules, amendments to rules, or rescissions of rules to the Missouri Small Business Regulatory Fairness Board?

Prior to submitting proposed rules, amendments, or rescissions, the state agency shall determine whether the proposed

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rule, amendment, or rescission affects small businesses. A rule affects small business if it will “cause direct and significant economic burden upon a small business or minority small business” or if it “is directly related to the formation, operation, or expansion of a small business.” See sections 536.010(1) and 536.300, RSMo. For any proposed rules that affect small businesses, the agency shall submit a small business statement as part of the rulemaking packet. See section 536.303, RSMo.

7. Where may the agency obtain a copy of a small business impact statement form?

A form that may be used to complete the small business impact statement is available on the Missouri Small Business Regulatory Fairness Board website at: <http://www.sbrfb.ded.mo.gov>.

8. How many copies of a proposed, amended, or rescinded rule do I need to file with the Joint Committee on Administrative Rules and the Secretary of State’s Administrative Rules Division?

One (1) complete rulemaking packet must be filed with JCAR.

For the SOS, you must file the original and one (1) copy of the rulemaking packet. Both the original and copy of the rulemaking packet must contain a JCAR stamp.

Please remember to bring as many copies of the rule packet that you would like date stamped to take back to your agency.

9. Is the number of copies I need to file with the Secretary of State’s Administrative Rules Division different when filing an emergency rule?

Yes. Emergency rules require an original and four (4) copies for the SOS.

10. When is an agency required to file a public fiscal note?

A public fiscal note must be filed if a proposed rule, amendment, or rescission will require or result in an expenditure of public funds by or a reduction of public revenues for the proposing agency or any other state agency or any political subdivision which is estimated to cost more than five hundred dollars (\$500) in the aggregate (over the lifetime of the rule) to any such agency or political subdivision. The public fiscal note must provide a detailed estimated cost of compliance for each affected agency or each class of affected political subdivisions and be supported by an affidavit by the director of the department that the estimated cost is reasonably accurate. If the proposed rule, amendment, or rescission is estimated to cost less than five hundred dollars (\$500) in the aggregate, then the agency must file an affidavit by the department director to that effect. Fiscal note forms and affidavits are available online at <http://www.sos.mo.gov/adrules/forms.asp>.

11. When is an agency required to file a private fiscal note?

A private fiscal note must be filed if a proposed rule,

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amendment, or rescission will require an expenditure of money by or reduction in income for any person, firm, corporation, association, partnership, proprietorship, or business entity of any kind or character which is estimated to cost more than five hundred dollars (\$500) in the aggregate (over the lifetime of the rule). The private fiscal note must provide an estimate of the number of persons or business entities by class that would be affected, a classification by types of the business entities in such manner to give reasonable notice of the number and kind of business affected, and an estimate in the aggregate for the cost of compliance for the affected entities. Fiscal note forms and affidavits are available online at <http://www.sos.mo.gov/adrules/forms.asp>

12. May an agency with cost estimates of more than five hundred dollars indicate in its public and private fiscal note(s) and affidavit(s) that the public or private entity cost is undetermined rather than providing actual cost calculations?

No. The state agency must provide actual cost calculations and projections in the aggregate (over the lifetime of the rule) for all agencies, political subdivisions, persons, or business entities affected by the rule or the rule will be void and of no further force and effect. Some agencies do so by providing a first-year cost and then estimated annual costs thereafter for the lifetime of the rule. See **Missouri Hospital Association v. Air Conservation Commission**, 874 S.W.2d 380 (Mo. App. W.D. 1994).

13. What entities are considered political subdivisions

for which a state agency must calculate costs in a public cost fiscal note when filing a rule, rule amendment, or rule rescission?

Section 536.200, RSMo, provides that a political subdivision includes counties, cities, towns, and villages, and school, road, drainage, sewer, water, levee, or any other special purpose district.

14. What is incorporated by reference material? Where can I find incorporated by reference material?

According to section 536.031.4., RSMo, an agency may incorporate by reference rules, regulations, standards, and guidelines of an agency of the United States or a nationally or state recognized organization or association without publishing the material in full. The reference to the material incorporated in the rule must fully identify the incorporated material by publisher, address, and date in order to specify how a copy of the material may be obtained and shall state that the referenced rule, regulation, standard, or guideline does not include any later amendments or additions.

The agency incorporating a rule, regulation, standard, or guideline must maintain a copy of the referenced rule, regulation, standard, or guideline at the headquarters of the agency and shall make it available to the public for inspection and copying at no more than the actual cost of reproduction. Materials incorporated by reference must be on permanent file with the agency and may not be discarded when the materials are updated.

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15. What is the difference in meaning between incorporated by reference material and included herein material?

If material is referred to as “included herein,” then the material must actually accompany the rule and be published with it.

16. How does the public submit comments to the agency regarding proposed rules, proposed amendments to rules, or the proposed rescissions of rules?

Comments are submitted to the agency proposing the rule or rule changes. The text of the proposed rule, amendment, or rescission will provide the name and address of the agency or entity where comments must be filed and the deadline for submitting such comments.

Comments are not filed directly with the Secretary of State (SOS) Administrative Rules Division.

17. Once an agency has received all comments to a proposed rulemaking, what is the next step in the rulemaking process?

The agency prepares a final order of rulemaking that includes summaries of all the comments received, the agency’s response to each comment, and any changes made to the proposed rulemaking as a result of the comments. Similar comments may be consolidated into one (1) comment as part of the final order of rulemaking.

18. When is the final order of rulemaking filed with SOS?

The final order of rulemaking must be filed with the secretary of state no later than ninety (90) days from the date the proposed rulemaking was published in the *Missouri Register* or it will become void and the process will have to start over. *Prior to filing with the SOS, the final order must be filed first with the JCAR for their thirty- (30-) day review period.*

19. After the final order of rulemaking is filed with the secretary of state, when does the new rule or rule change(s) become effective?

The new rule or rule changes becomes effective thirty (30) days after the final order of rulemaking is published in the *Code of State Regulations*.

Emergency Rules

1. What is an emergency rule?

Under section 536.025, RSMo, an emergency rule requires an early effective date because of an immediate danger to the public health, safety, or welfare or to preserve a compelling governmental interest.

2. How quickly can an emergency rule become effective?

Emergency rules may be effective not less than ten (10) days

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after filing or at such later date as may be specified in the rule.

3. How long can an emergency rule stay in effect?

An emergency rulemaking is effective for one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer and may be terminated at any time by the agency. All emergency rules must include a statement setting forth the dates during which they will be in effect.

4. My emergency rule is about to expire. May I file another one?

No. Emergency rules are not renewable. If a proposed rule is filed at the same time as an emergency, it is possible to have the proposed rule become effective before or by the time the emergency rule expires.

5. Once an emergency rulemaking is filed with the secretary of state, will it automatically go into effect?

No. Emergency rules are reviewed by the secretary of state's office to determine if they comply with the statutory requirements for publication and adoption. See section 536.025, RSMo.

6. How does an agency or entity that has filed an emergency rule terminate such rule?

The agency may terminate an emergency rule during the

period the rule is in effect by filing an order with the secretary of state fixing the date of such termination. The order of termination will be published in the *Missouri Register*.

Rulemaking Manual and Training

1. Is the rulemaking manual available on the Internet?

Yes. *Rulemaking 1-2-3 Drafting and Style Manual*, the rulemaking manual, is online at <http://www.sos.mo.gov/adrules/manual/manual.asp>.

2. Is there a way for my agency to arrange for training on rulemaking?

Yes. The Administrative Rules Division of the Secretary of State conducts rulemaking training sessions for state agencies. To set up a rulemaking class, call (573) 751-2022.

Missouri Register

1. What is the *Missouri Register*?

The *Missouri Register* is the publication that sets forth all state agency rulemakings as they proceed through the rulemaking process. Specifically, the *Register* will contain emergency rules, proposed rules, final orders of rulemakings, and in additions. The purpose of the *Missouri Register* is to allow citizens access to the rulemaking process and the ability to comment on and recommend changes to proposed rules. Additionally, other state government information, such as dissolutions of limited

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liability companies and limited partnerships, are published in the *Register*.

2. How often is it published?

The *Missouri Register* is published twice a month, around the 1st and 15th of each month.

3. Where can I find it on the web?

The *Missouri Register* is online at <http://www.sos.mo.gov/adrules/moreg/moreg.asp>.

4. What is the cost of a paper subscription to the *Missouri Register*?

The *Missouri Register* is currently available for fifty-six dollars (\$56) per year.

Code of State Regulations

1. What is the *Code of State Regulations*?

The *Code of State Regulations* is a fifteen- (15-) volume loose-leaf set of rules promulgated by all state agencies. It is currently comprised of just over ten thousand (10,000) pages. The rules in the *Code* are organized by state agency.

2. How often is it published?

An update to the *Code of State Regulations* is published once

a month on the last day of the month except in January when it is published on the 29th (30th in a leap year). The rule-makings published in the *Code* become effective thirty (30) days after they are published unless a later day has been chosen by the agency.

3. Where can I find the *Code of State Regulations*?

The *Code of State Regulations* is available free of charge online at <http://www.sos.mo.gov/adrules/csr/csr.asp>. A printed copy is available for a fee. Please call the Administrative Rules Division for pricing at (573) 751-4015.

Non-Substantive Change Request

1. Are there non-substantive changes that can be made in a rule without going through the rulemaking process?

Yes. Section 536.032 allows changes to be made to department or division names, street address, web address, or phone numbers by simply filing a non-substantive change request.

2. Where do I find the Non-Substantive Change Request form?

The form can be found at <http://www.sos.mo.gov/adrules/forms.asp>.

3. When I submit a non-substantive change request when will that change go into the *Code of State Regulations*?

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The change will be made in the update to the *Code of State Regulations* at the end of the month in which the non-substantive change appeared in the *Missouri Register*.

4. Where do I submit a Non-Substantive Change Request form?

The form, along with a transmittal, is filed with the Administrative Rules Division of the Office of the Secretary of State just as any other item to be published in the *Missouri Register* would be filed. Email an electronic copy of the form prior to submitting the paper copy.

5. Does a Non-Substantive Change Request need to be filed with JCAR?

No. The statute only requires the form be filed with the Administrative Rules Division of the Office of the Secretary of State.

Dissolutions

1. Do I need to publish the dissolution of my company in the *Missouri Register*?

Yes. The secretary of state is required by sections 347.141 and 359.481, RSMo, to publish dissolutions of limited liability companies and limited partnerships. The content requirements for the one- (1-) time publishing of these notices are prescribed by these same sections of statute.

2. How do I file a dissolution for publication in the *Missouri Register*?

We request that documents submitted for publication in this section be submitted in print-ready 8 ½" by 11" manuscript by email to dissolutions@sos.mo.gov or by faxing to (573) 751-3032.

3. What is the charge for publishing a dissolution in the *Missouri Register*?

There is no charge to publish a dissolution in the *Missouri Register*.

Construction Claims Binding Arbitration Cap

Where can I find the Construction Claims Binding Arbitration Cap?

The Construction Claims Arbitration Cap is published yearly in the *Missouri Register*, usually in December. The most current cap published can be found in the Rule Changes Since Update table in the latest issue of the *Missouri Register* under 20 CSR Construction Claims Arbitration Cap. The last page number listed will be the most current limit published.

State Legal Expense Fund

Where can I find the State Legal Expense Fund?

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The State Legal Expense Fund is published yearly in the *Missouri Register*, usually in December. The most current fund published can be found in the Rule Changes Since Update table in the latest issue of the *Missouri Register* under 20 CSR State Legal Expense Fund. The last page number listed will be the most current limit published.

Sovereign Immunity Limit

Where can I find the Sovereign Immunity Limit?

The Sovereign Immunity Limit is published yearly in the *Missouri Register*, usually in December or January. The most current limit published can be found in the Rule Changes Since Update table in any issue of the *Missouri Register* under 20 CSR Sovereign Immunity Limit. The last page number listed will be the most current limit published.

How can I contact the Administrative Rules Division?

You may contact us by telephone at (573) 751-4015; by email at rules@sos.mo.gov; by regular mail at Office of the Secretary of State, Administrative Rules Division, PO Box 1767, Jefferson City, MO 65102; or in person at the James C. Kirkpatrick State Information Center, 600 W. Main Street, Jefferson City, Missouri, Room 168.

Definitions



Administrative Rules Division—Administrative Rules Division of the Office of the Secretary of State, located in Room 168, James C. Kirkpatrick State Information Center, 600 W. Main, Jefferson City, MO 65101 or PO Box 1767, Jefferson City, MO 65102. The Administrative Rules Division is the publisher of the *Missouri Register* and the *Code of State Regulations*.

Affidavit—Statement affirming public cost of proposed rulemaking is less than five hundred dollars (\$500) or the accuracy of the public fiscal note if cost is more; signed by your department director, or the person to whom authority for rulemaking has been delegated.

Authority section—Paragraph following text of the rule showing section number(s) and latest revision date of *Revised Statutes of Missouri* that provides the authority for making that rule. Following this number(s) is a history of the filed and effective dates for the original rule and all of its amendments.

Copies—Exact set of copies (i.e., Xerox copies) of each page in the original. Proposed rulemakings include transmittal, cover letter, affidavit, rule text, and fiscal notes and forms, if applicable. Orders of rulemaking include transmittal, cover letter, and text of final order (not text of proposed rule or

amendment). Emergency rules include transmittal, cover letter, and text of emergency rule.

Cover letter or certification letter—Letter (on agency letterhead) naming the rule number and type of rule and stating the completeness and accuracy of the rule, signed by the person with rulemaking authority for your department/division. One (1) cover letter may serve for several rules, but each rule number must appear on the cover letter and a copy goes with each set for each rule. Please **highlight** the rule number on the original for each rule with which it is included.

Designated signer—Persons authorized by the director of your department to sign affidavits, fiscal notes, and cover letters. An original delegation of authority letter signed by the director and designated signer(s) must be on file in the Administrative Rules Division.

Economic impact on small business—Section 536.300, RSMo, requires any agency filing a proposed rulemaking to consider if it has an impact on small business. If not, the agency shall so certify in the transmittal letter for the proposed rulemaking. If there is an impact, a small business impact statement is to be filed with the secretary of state, the Joint Committee on Administrative Rules, and the Small Business Regulatory Fairness Board on the same day the proposed rulemaking is filed. The board is located in Room 680, Harry S Truman Bldg., 301 West High Street, Jefferson City, Missouri.

Any agency filing a proposed rulemaking must determine if the proposed rulemaking conforms to the requirements

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of section 1.310, RSMo, regarding user fees. In addition, the agency must also certify that the proposed rulemaking complies with the small business requirements of section 1.310, RSMo.

Effective date—The date set by statutes when a rule becomes effective. Normally, the effective date of a rule is thirty (30) days after publication in the *Code of State Regulations* (CSR). An agency may choose a later date.

Filing—Taking originals and copies of rules to Administrative Rules Division, or copies of rules to the Joint Committee on Administrative Rules and/or the Small Business Regulatory Fairness Board.

Fiscal Note—Calculation and description of costs for proposed rulemaking when it is expected to exceed five hundred dollars (\$500). These are to be done on forms provided in the rule manual, formatted in Microsoft Word or Excel. These forms are also available online at <http://www.sos.mo.gov/adrules/forms.asp>.

GPO Style Manual—The *United States Government Printing Office Style Manual* is used for questions of style in the *Code of State Regulations* and *Missouri Register*. This is available on the Internet at <http://www.gpoaccess.gov/stylemanual/browse.html>.

Joint Committee on Administrative Rules (JCAR)—Joint membership committee of the legislature (both houses) that consists of five (5) members of the Senate and five (5) members of the Missouri House of Representatives. The senate members of the committee are appointed by the President pro tem of the senate and the house members by the Speaker of the house. JCAR is located in Room B-8, State Capitol Building, Jefferson City, Missouri.

Julian Day Number Calendar—A calendar which has each day of the year numbered from 1 to 365 (or 366 in a leap year).

Legislative Days—For purposes of emergency rules which may be effective for up to thirty (30) legislative days the definition is in section 536.025.7, RSMo—"A rule adopted under the provisions of this section shall clearly state the interval during which it will be in effect. Emergency rules shall not be in effect for a period exceeding one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. For the purposes of this section, a "legislative day" is each Monday, Tuesday, Wednesday and Thursday beginning the first Wednesday after the first Monday in January and ending the first Friday after the second Monday in May, regardless of whether the legislature meets."

Numbers in Rules—Use the *GPO Style Manual* instructions for using numbers in legal documents. This is included in section 12.18, and it says to follow spelled out numbers with numerals in parentheses. Ex: ten dollars (\$10). See <http://www.gpoaccess.gov/stylemanual/browse.html>.

Original—The first set of your rule materials, including cover letters and affidavits signed in ink.

Packet—Set of rules to be filed, including one (1) complete set of originals, applicable number of copies, and a diskette, CD, or email with text of rule.

Promulgate—To make known or publicly announce the terms of (a proposed rule or law).

Public hearing—An open meeting with time and place designated for the agency to hear discussion on a proposed rulemaking. The announcement of time and place for public hearing must be published in the *Missouri Register* at the same time as the

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proposed rulemaking. When there is to be a hearing, it must be at least thirty (30) days after the publication date of the proposed rulemaking.

Publisher's note—A note written by the Office of the Secretary of State providing additional information about a rule.

Purpose section—A short description of the reason for a rule. An amendment has a purpose that only describes the reason for the amendment and does not go to the permanent rulemaking.

Small Business Regulatory Fairness Board—Board established by section 536.305, RSMo, located in Room 680, Harry S Truman Bldg., 301 West High Street, Jefferson City, MO 65102, (573) 526-3606.

Takings analysis—Executive Order 93-13 and section 536.017, RSMo 2000, directs each agency doing a proposed rulemaking to do a "takings analysis" to evaluate whether the rule constitutes a taking of real property. Furthermore, "No department or agency shall transmit a proposed rule or regulation to the Secretary of State" until such an analysis has occurred. A takings analysis is **not** required when the rule is federally mandated or if the rule substantially codifies existing federal or state law.

Transmittal—Cover sheet for each rule with number of rule and type of rule provided.



Rule Numbering

Question: I'm writing a rule. How do I number it?

Answer: Ask the Administrative Rules Division of the Office of the Secretary of State, and we can assist you with selecting the appropriate rule number.

The Secretary of State's Office is responsible for the numbering of all rules (section 536.023, RSMo). Basically, the rule number is determined by what agency you are with, the division in that agency, and the subject the rule will cover.

For instance, if your agency has written a new rule on wooden duck toys, it would make sense that the rule goes in your chapter that already exists on wooden toys. If you had a new rule on metal toy soldiers, and there was no chapter on metal toys, you would probably want a new chapter on metal toys. The main thing to remember when trying to establish rule numbers is where would the rule be located within your rules logically?

Rules about rule numbers

A rule number can only be used once. Once a rule number has been used for a rule, the same rule number cannot be used for another rule with a different subject. For instance, you wrote a rule, **15 CSR 30-995.030 Wooden Duck Toys**. Two (2) years later, you rescinded this rule, as it was no longer necessary to have a rule on wooden duck toys. Now you have determined you need a rule on metal toy soldiers, so you write the new rule; you cannot give it the number **15 CSR 30-995.030 Metal Toy Soldiers**. This rule would require another rule number because it has a different subject matter than the rule that originally contained this number.

Instead, you assign the new rule number **15 CSR 30-995.050 Metal Toy Soldiers**, using a rule number that has not been used before, as this is your first rule on metal toy soldiers. In an effort to further clarify, rather than complicate, let's assume you later decided you needed a rule on wooden duck toys again. You could use **15 CSR 30-995.030** for this rule since it is the same subject matter. You would, however, need to make sure that you include the history in your authority section from the original rule.

Leave room in your chapters for expansion of rules. Let's say you have a new chapter **15 CSR 30-997**, and you have ten (10) new rules. If you number the rules 15 CSR 30-997.001 through 15 CSR 30-997.010 that works for now. However, next year if you should want to come back and add a new rule and want to put it between rule 15 CSR 30-997.003 and 15 CSR 30-997.004, you have no place to put it. So, in the beginning, it would be better to allow for space between your rule numbers. For example, assign rule numbers in increments of ten (10)—15 CSR 30-997.010, 15 CSR 30-997.020, etc. This way, you should have room to add rules between numbers in the future should the need to do so arise.

How to Cite Rules and RSMo

RULES

The rules are codified in the *Code of State Regulations* in this system—

Title	CSR	Division	Chapter	Rule
25		15-	5	.025
Department	<i>Code of State Regulations</i>	Agency Division Name	General subject area regulated	Specific subject area regulated

and should be cited in this manner: 25 CSR 15-5.025.

The rule is properly cited by using the full citation, for example, 25 CSR 15-5.025 NOT Rule 15-5.025.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I., and subitem a.

STATUTES

Citations of RSMo are to the *Missouri Revised Statutes* as of the date indicated. The citation for those sections of the statutes would be cited as section 536.010, RSMo Supp. 2013, or Chapter 536, RSMo 2000 and Supp. 2013.

Incorporated by Reference and Included Herein

There has been confusion about the policy as to the use of the term “incorporated by reference.” The following is the policy adopted by the Administrative Rules Division, Office of the Secretary of State:

When we do not include a form or other material, or do not publish the form or other material, but it is considered a part of the rule and is referred to in the rule, we will use the term “incorporated by reference.” This will meet the requirements of sections 536.021.2.(3) and 536.031.4., RSMo, to make this material available at the office of the adopting state agency. The reference in the rule must identify the incorporated material by publisher, address, and date specifying how a copy of the material may be obtained. The rule has to state that it does not include any later amendments or additions.

When the form or other material is included and is considered a part of the rule, and we do publish the form or other material, we will state that the form or other material is “included herein.”

Finally, the text of the rule should not be divided by other language that is not a part of the rule. Therefore, whether we are utilizing “included herein” and publishing the forms or other material as a part of the rule, or we are using “incorporated by reference” (not publishing the forms or other material), this is considered part of the rule and should appear before the authority section.

Annotations



Sometimes rules can cause controversy, which may lead to entire rules or parts of rules being challenged in court. In some instances, a court may declare that part, or all, of a rule is valid or invalid.

When this occurs, an agency may want to add an explanation of the case to the published rule in the *Code of State Regulations*. Additionally, a note about a case involving the subject matter covered, as well as an attorney general's opinion about a particular subject, may be added. This annotation may be added to the rule as published in the *Code of State Regulations*.

The agency should submit the annotation when they file their rulemaking with the Office of the Secretary of State. The annotations will not be published in the *Missouri Register*, but will be published in the *Code of State Regulations*.

The *Code of State Regulations* is not fully annotated. Only annotations submitted by the agencies or the courts to the Office of the Secretary of State are published in the *Code of State Regulations*. There may be additional court cases, opinions, and other such material about particular rule subjects that are not included in the *Code of State Regulations*.

What is the Difference Between a Statute and a Rule?

Statutes are laws approved by the Missouri General Assembly and usually by the governor. They are based on constitutional authority granted to the legislature to establish policies and approved by a majority of the house and senate. The statutes, or the laws passed by the legislature, are published in the *Revised Statutes of Missouri*. Statutes may be created and amended each year by the legislature. Following each session the *Revised Statutes of Missouri* are updated and republished by the Joint Committee on Legislative Research, usually by adding a supplement with new and amended statutes.

The executive branch of state government promulgates rules. The executive branch includes elected officials—governor, lieutenant governor, secretary of state, attorney general, state treasurer, and state auditor. Also included in this branch under the administration of the governor's office are all the various state agencies, such as: the Department of Transportation, Department of Elementary and Secondary Education, Department of Conservation, Department of Public Safety, etc.

These elected officials and state agencies have rulemaking authority granted both constitutionally and by legislative statutes. Once the executive entities have been granted rulemaking authority, they have the right to create rules to establish policy and procedure for carrying out their functions. Once effective, these rules have the force and effect of law.

The Dos and Don'ts of Moving Rules

Question: I have a rule that I want to move. May I move it to another place in the Code?

Answer: Maybe yes, maybe no. First, we need to find out why you want to move the rule and where you wish to move it.

Sometimes rules must be moved because a division is transferred from one state agency to another. In these cases, rules can be moved. Sometimes divisions reorganize, and this can also result in a need to move rules.

The best way to move a rule is by amending it. When you amend a rule to move it, not only can you change the rule number, but you can also amend any references inside the rule that refer to old rule numbers or statutes that might have changed as a result of reorganization. A reference to the original rule number is added to the history of the rule.

A rule may also be moved by rescinding the old rule and readopting a new rule in a different location. This situation can occur when divisions move to new state agencies and their responsibilities are increased or decreased. The old rule's history stays with the old rule. However, a notice is usually included in the new rule's authority section stating that material covered in this rule was previously contained in (insert old rule number).

In certain circumstances, rules may be moved through an In Addition in the *Missouri Register*. Rules moved in this fashion can only have the rule numbers changed and cannot correct any old references within the body of the rule. To correct any outdated references in the rule, a proposed amendment through the normal rulemaking process must be completed. A reference to the original rule number is added to the history of the rule.

Time Line for Publishing Administrative Rules

The publication schedule for the *Register* and the *Code* is published near the bottom of the contents page of the *Missouri Register* and on the Internet at <http://www.sos.mo.gov/adrules/pubsched.asp>. This shows when a particular filing will be published and when a final order becomes effective after publication.

A proposed rule, proposed amendment, or proposed rescission must have one (1) copy filed with the Joint Committee on Administrative Rules in Room B-8, Capitol Building, Jefferson City, Missouri **on the same day** as it is filed with the Office of the Secretary of State, Administrative Rules Division, in Room 168, James C. Kirkpatrick State Information Center, 600 West Main, Jefferson City, Missouri.

A proposed rule, proposed amendment, or proposed rescission must have at least a thirty- (30-) day comment period following the publication date. Likewise, if the rule is to have a public hearing, it must be scheduled at least thirty (30) days after the publication date of the proposed rule or amendment.

Once this thirty- (30-) day comment period or hearing date has passed, then you have ninety (90) days to act on the proposed rule by filing a final order. The final order may either adopt the proposed rulemaking or withdraw it. In the case of adoption or withdrawal, a copy of the final order must be filed with the Joint Committee on Administrative Rules in Room B-8, of the Capitol Building, Jefferson City, Missouri **thirty (30) days before filing** with the Administrative Rules Division, Office of the Secretary of State, Room 168, James C. Kirkpatrick State Information Center, 600 West Main St., Jefferson City, Missouri. This order is first published in the *Missouri Register* then in the *Code of State Regulations*. It may become effective thirty (30) days after publication in the *Code of State Regulations*.

Example: A proposed rule is filed with the Joint Committee on Administrative Rules and the Office of the Secretary of State, Administrative Rules Division, on May 1. This rule is published in the June 1 issue of the *Missouri Register*. The thirty (30) days for receiving comments following June 1 ends on July 1. A copy of the final order may be filed with the Joint Committee on Administrative Rules on July 2. The same order is filed with the Administrative Rules Division at the Secretary of State's office on August 1, which is the first day after the required thirty- (30-) day review period for the Joint Committee on Administrative Rules that the rule can be filed. The order filed with the Administrative Rules Division is then published in the September 4 *Missouri Register*. The final form of the rule is then published in the September 30 update to the *Code of State Regulations*. The rule becomes effective thirty (30) days following publication in the *Code*, which is October 30.



Time Line for Publishing Administrative Rules

The previous example shows approximately the shortest time it takes from the original filing until a rule becomes effective, or, about six (6) months. It can take up to seven (7) or eight (8) months if the entire ninety (90) days in the life of the proposed rule is utilized. If the deadlines in the *Missouri Register* schedule are not followed, extra time is added between filing and publishing. In our example, if the proposed rule had been filed on May 2 instead of May 1, it would have moved the publication date in the *Missouri Register* to June 15. If the final order had been filed with the Administrative Rules Division on August 16, the order would have been published in the October 1 *Missouri Register* and then published in the October 31 update of the *Code of State Regulations*, giving an effective date of November 30.

Hint: Use the timeline calculator on the Internet at <http://www.sos.mo.gov/adrules/datecalc/default.aspx> to calculate the various filing dates and deadlines associated with the rulemaking process.

Time Line for Emergency Rules

An emergency rule is filed with the Joint Committee on Administrative Rules and the Administrative Rules Division of the Secretary of State on the same day. It may become effective as early as ten (10) days after filing, or any time after that as indicated in the rule.

When the emergency rule becomes effective, it may remain effective for one hundred eighty (180) days or thirty (30) legislative days. Use the timeline calculator on the Internet at <http://www.sos.mo.gov/adrules/datecalc/default.aspx> for filing dates and deadlines associated with emergency rulemaking. The calendar will give effective dates as well as expiration dates for both. If you wish it to expire sooner, you may elect to choose an earlier date.

There is also a provision to allow a rule to be effective for up to thirty (30) **legislative days**, if that is a longer period of time than the one hundred eighty (180) days. This would apply from approximately the end of March until the first of August. **See** section 536.025, RSMo 2000, in the Appendix to this manual for the explanation of how to count legislative days.

NOTE: When the thirty (30) legislative-day option is selected, the rule may remain effective until sometime in either January or February, depending on whether or not the effective date includes any legislative days in April or May of the previous legislative session. The calendar on the next page also shows legislative days which may be used to calculate legislative days for expiration dates.